

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8065 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AMARSHI K PARMAR

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Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR JS BRAHMBHATT for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/11/98

#### ORAL JUDGEMENT

Rule. By way of this Special Civil Application the petitioner Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation') has challenged the award dated 2.10.1996 passed by the Presiding Officer, Labour Court, Rajkot in Reference Case No. 295 of 1990 thereby the respondent conductor has been directed to be reinstated with 30 per cent backwages.

2. Necessary facts are that the respondent Amarshi

K. Parmar was working as conductor with the petitioner Corporation. It is alleged that on 19.2.1987 while he was performing the duty of conductor in a bus on its route Rajkot-Nagpal, he did not issue tickets to 16 1/2 passengers though collected the fare from those passengers. A departmental enquiry was instituted. The conductor took the plea that he was under medical treatment and therefore he approached the Department authorities for grant of leave but the same was declined. He was given duty on the bus which was running late for about 4 hours and 30 minutes, as the conductor who was given duty on the bus had not turned up. It was further submitted that as the bus was late for 4 hours and 30 minutes the bus moved without the tickets being issued. In the running bus he had issued tickets to 26 passengers within 15 minutes. The bus travelled about six kilometers when it was checked by the Inspector. He admitted the fact that tickets were not issued to 16 passengers. The Inspector took the statement of 16 passengers. They stated that fare was collected by the conductor but the tickets were not issued. The enquiry officer found the charges proved against the respondent workman. The competent authority inflicted the punishment of dismissal. The workman took the matter in appeal. An industrial dispute was raised which culminated into reference to the Labour Court, Rajkot. Before the Labour Court the respondent workman did not challenge the correctness of the departmental enquiry. In view of this the judgement of the Labour court confirmed the finding of misconduct. He however considered that the ends of justice would meet if the respondent workman is reinstated with 30 per cent backwages.

3. It is contended by Mr. Thakker, learned counsel for the petitioner Corporation that the learned judge of the Labour Court has exceeded the jurisdiction in interfering with the punishment in spite of the fact that the charges of misappropriation has been found proved. It is also submitted that the punishment of dismissal in the instant case cannot be said to be disproportionate to the guilt. On the other hand it is contended by Mr. Brahmhatt that the respondent had only admitted the correctness of the departmental enquiry but he did not admit the correctness of the finding. It is also submitted that there is no evidence to show that the respondent workman had collected the fare from the passengers. The learned counsel stressed that the respondent workman was sick but still he was compelled to proceed on duty. Explaining the conduct it is submitted that as the bus was late by 4 hours and 30 minutes, he

had no option but to issue tickets in the running bus. He had issued tickets to 26 passengers.

4. I have considered the rival contentions. So far as not granting the leave is concerned, the respondent workman was labouring under a wrong impression that it is obligatory for the officer concerned to grant leave. Under the relevant Rules the conductor was not supposed to issue tickets in the running bus. If the bus was late he should have waited for some time more and issued the tickets. The plea taken by him has been rightly rejected by the enquiry officer and confirmed by the Labour Court. The finding of fact does not call for any interference by this court. There is a serious allegation of misappropriation of public money. In view of this, the learned judge of the Labour Court was unjustified in interfering with the order of punishment. He was completely in error in considering that by denying 70 per cent backwages he was substituting the punishment. It is surprising that while the respondent workman has been found guilty of misconduct, he has been rewarded with reinstatement. It is of course true that the Labour Court could have considered to substitute the punishment but that exercise was not undertaken. Be that as it may, looking to the gravity of charge the order of termination is just and proper. It cannot be said to be disproportionate to the guilt.

5. In view of the aforesaid, this Special Civil Application is allowed. The award dated 2.10.1996 passed by the Labour Court, Rajkot, is quashed and set aside. The respondent workman has been reinstated as no interim relief was granted by this court on reinstatement. Thus, he will be entitled to any salary due for the period he has worked. If the salary is due the same shall be paid to him. Rule made absolute.

The learned counsel for the petitioner says that he wants to challenge this order and therefore operation of the order may be stayed for one month. I do not find any justified reason to stay this order and hence the request is rejected.

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